

Abrams Environmental Law Clinic  
The University of Chicago Law School  
6111 E. 60<sup>th</sup> Street  
Chicago, IL 60637

Freedom of Information Officer  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

Subject: FOIA Request – U.S. Smelter and Lead Refinery, Inc. Superfund Site

To whom it may concern:

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and applicable Environmental Protection Agency (“USEPA”) Regulations, 40 C.F.R. § 2.100, et seq. from the Abrams Environmental Law Clinic at the University of Chicago School of Law (“AELC”) and the Environmental Advocacy Clinic at Northwestern University Pritzker School of Law (“EAC”). The requested records relate to communication between USEPA, the City of East Chicago, Indiana, the Indiana Department of Environmental Management (“IDEM”), and any other agency party, entity or individual regarding actual or potential cleanup or enforcement actions related to the former site of U.S. Smelter and Lead Refinery, Inc. (“U.S.S. Lead”). The U.S.S. Lead site is assigned CERCLIS ID # IND047030226 (“Site”). This request is separate and distinct from the request initially made by Natalia Ginsburg on July 29, 2016 (later changed to Mark Templeton as the point of contact), which is assigned the tracking number EPA-R5-2016-008946. Please do not include records or communication that are exact copies of records that USEPA provided in response to the July 29, 2016 request or that are already publicly available on-line through the CERCLIS database system.

#### Records Sought

AELC and EAC requests the following records, documents, and communication (without any limitation as to the date of creation of the materials):

- (1) All records and communication relating to the former site of U.S. Smelter and Lead Refinery, Inc., including all records, documents and communications before the former site of U.S. Smelter and Lead Refinery, Inc. was considered for listing.
- (2) All records and communication relating to any and all efforts to identify Potentially Responsible Parties (“PRPs”) including, but not limited to, USEPA/IDEM’s PRP baseline search tasks and follow up tasks, site investigations, interviews, information request letters and related responses. Please include any documents that detail the nature of any party’s involvement at the Site, including the nature of a party’s involvement (e.g., as a potential owner, generator/arranger, etc.), any applicable exemptions or exclusions, and the

amount and type of waste a party potentially or actually contributed. The request includes PRP searches for zone 1, zone 2, and zone 3 of Operable Unit 1 ("OU1").

- (3) All records and communication relating to the phasing of the cleanup of the Site, or of potential phasing plans for cleanup of the Site, at any properties on or in close proximity to the Site, whether under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), or other federal and state environmental laws. This request includes phasing of cleanup for zone 1, zone 2, and zone 3.
- (4) All records and communication relating to the division of OU1 into zones. This request includes records relating to the reasons for the division of OU1, and any factors considered in the division.
- (5) All records and communication related to environmental justice concerns at and near the Site. Environmental justice concerns include, but are not limited to, considerations of race, ethnicity, socioeconomic status, and education levels of current and former residents on or near the Site, the health impacts of lead, arsenic or other contaminants at the Site, the distributional impact of actual or potential contamination (hotspots), planned or actual outreach or communication to the community on or near the Site, and records relating to the effect of real or potential contamination on nearby schools and public housing.
- (6) All records and communication between USEPA and U.S.S. Lead, including all communication, before, during and after bankruptcy of U.S.S. Lead. This request includes any communication with the East Chicago plant, and any communication with U.S.S. Lead's current or former owners and operators located in East Chicago or elsewhere.
- (7) All records and communication between USEPA, the City of East Chicago, East Chicago Housing Authority, City Council, or other officials regarding the City's plan for development of zone 1 after demolition. This includes, but is not limited to any communication or planning regarding clean up actions after demolition, informal or formal plans regarding post-demolition use of the property, and comprehensive plans that include information regarding zone 1.
- (8) All records and communication relating to the elimination of any contaminants of concern and the decision to base the cleanup solely on the contaminants lead and arsenic.
- (9) All records and communication relating to USEPA Region 5's May 09, 2012 Exemption Request from a National Remedy Review Board review, including but not limited to the National Remedy Review Board's response to this Exemption Request

#### Request for Fee Waiver

A full fee waiver is requested under 5 U.S.C. § 552(a)(4)(A)(iii) (granting a fee waiver where "disclose of the information is in the public interest because [the information] is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester").

The requested records concern “the operations or activities of the government.” 40 C.F.R. 2.107(I)(2)(i). USPEA has the responsibility to take action in conjunction with counterpart state agencies under a broad range of statutes, including CERCLA. 42 U.S.C. § 9601 et seq. The requested records describe the activities of USEPA and its interaction with IDEM, East Chicago, and communities. In addition, USEPA has taken direct responsibility for the cleanup of the area under CERCLA. *See* <https://semspub.epa.gov/work/05/446987.pdf>.

The requested records are “likely to contribute” to public understanding of the activities described above. 40 C.F.R. 2.107(I)(2)(ii). These materials will contribute to the public understanding of USEPA’s involvement in evaluation and remediation of the Site.

The requested records will also “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” 40 C.F.R. 2.107(I)(2)(iii). The Site is a residential zone. Residents who live, work and play near contaminated and potentially contaminated areas will benefit from an understanding of the actions taken by USEPA to alleviate present and potential risks in their community. Information will be shared as appropriate and will provide East Chicago community members with further understanding of USEPA operations in their communities. All records and communication will be published online on a dedicated website.

The University of Chicago is a not-for-profit, educational organization in good standing with the Secretary of State of Illinois. The records are requested in furtherance of any commercial interest. 40 C.F.R. 2.107(I)(3)(i).

In the alternative, if a fee waiver is not granted, please provide the Clinic with an estimate of expenses and hold for approval before proceeding.

### Conclusion

Please mail copies of all requested records by the statutory deadline through email to [templeton@uchicago.edu](mailto:templeton@uchicago.edu) and [dcowart@uchicago.edu](mailto:dcowart@uchicago.edu) or alternatively through post to:

Mark Templeton  
Dylan Cowart  
Abrams Environmental Law Clinic  
The University of Chicago Law School  
1111 E. 60<sup>th</sup> Street  
Chicago, IL 60637

We appreciate your efforts in responding to this request. Please do not hesitate to call or email if you have any questions or concerns regarding the requested records.

Sincerely,

Dylan Cowart  
Mark Templeton  
Abrams Environmental Law Clinic  
The University of Chicago Law School

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